

United States Senate

WASHINGTON, DC 20510

February 26, 2015

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Wheeler:

The recent AWS-3 spectrum auction was a success for consumers and provided a critical boost for important federal policy priorities. Wireless providers will be able to make more wireless broadband available to more Americans, and important priorities such as first responder communications and deficit reduction will benefit from the more than \$40 billion generated from the auction. The record-breaking total proceeds will undoubtedly increase interest within the wireless industry, at the Commission, and within Congress to put more spectrum in the hands of the private sector to grow our economy and ensure the United States remains the world leader in wireless technology. That is why I am especially troubled by reports of Dish Network's use of the Federal Communications Commission's (FCC) designated entity program to receive more than \$3 billion in discounts to emerge as one of the auction's largest winners.

Dish holds an 85 percent stake in two companies that appear to have been created for the sole purpose of participating in the AWS-3 auction and taking advantage of bidding credits that Congress intended only be made available to small businesses. Dish's two shell companies – Northstar Wireless and SNR Wireless – claim in filings that although Dish holds an 85 percent stake in each of the companies, Dish does not control the companies.

Further illustrating Dish's abuse of the Commission's well-intentioned designated entity program, and the flaws with the Commission's rules governing the program, is the fact that an Alaska Native Corporation (ANC), Doyon Ltd., with revenue of more than \$318 million in 2013, is listed as the controlling shareholder of Northstar Wireless. The fact that an ANC with hundreds of millions of dollars in revenue is considered a small business under FCC rules is insulting to the true small businesses that wish to compete for spectrum. Before spectrum licenses are awarded to the auction's winners, the Commission must thoroughly investigate the legitimacy of all designated entities that participated in the auction.

Wireless spectrum and federal resources are both far too scarce to allow multibillion-dollar corporations to abuse taxpayers this way. Dish was not the first multibillion dollar telecommunications provider to take advantage of the designated entity program but the Commission should act to ensure it is the last. The rules for the designated entity program need to be revised in a comprehensive manner so that no future auction is manipulated in the same way. In doing so the Commission should eliminate preferential treatment for ANCs that do not meet the standard for small businesses. While I believe Congress gave the Commission a great deal of flexibility to address these issues on its own, I stand ready to work with you, your fellow commissioners, and my colleagues on the Senate Commerce, Science, and Transportation Committee to address this problem legislatively if necessary.

Sincerely,



Claire McCaskill
United States Senator

UNITED STATES SENATE



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 11, 2015

The Honorable Claire McCaskill
United States Senate
506 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator McCaskill:

Thank you for your letter regarding the results of the successful AWS-3 spectrum auction and your concerns about the FCC's designated entity (DE) program. I remain committed to providing bona fide small businesses a meaningful opportunity to participate in FCC spectrum auctions – including next year's incentive auction – while protecting the integrity of our auction program. We are revisiting our small business bidding rules in advance of the incentive auction.

In your letter, you specifically expressed concerns related to the participation of Alaska Native Corporations (ANCs) in the recent AWS-3 auction. Our rules governing participation by ANCs were initially put in place at the beginning of the auction program in 1994, and are based on rules promulgated by the Small Business Administration (SBA), including the SBA's general attribution rule pertaining to Indian tribes and ANCs.

Our competitive bidding rules must achieve the balance of objectives Congress established and reflect today's wireless marketplace realities. On a bipartisan basis, the Commission initiated a proceeding last October to revisit our competitive bidding rules prior to next year's historic incentive auction. The Notice of Proposed Rulemaking (NPRM) recognizes that the wireless industry has changed significantly since the Commission last comprehensively updated its competitive bidding rules in 2006. The NPRM's proposals specifically address the challenges new entrants face today, including raising capital to compete in an auction; finding a revenue stream to support network construction and business expansion; and developing a business model based on market needs. The NPRM also recognizes the challenge of entering the wireless marketplace, in which today more than 95 percent of existing customers are served by the top four providers, which combined serve approximately 300 million customers.

At the same time, our rules must preserve the integrity of the Commission's auction process and ensure that bidding credits are available only to eligible entities. The NPRM therefore seeks comment on a broad range of questions about the efficacy of both our existing and proposed new rules intended to safeguard the award of small business benefits.

We are keenly aware that we must also look to "lessons learned" from Auction 97, the recently-concluded AWS-3 auction. Public input, in addition to ongoing staff review of bidding data from that auction, will inform any changes to our current rules that I may present to my

fellow Commissioners for consideration in the coming months, and before the incentive auction commences. We extended the Competitive Bidding NPRM comment deadline three times so that interested parties could take into account lessons learned from Auction 97 as they advocate for maintaining or modifying rules that will apply in future auctions, including the incentive auction. Initial comments were due on February 20, and replies were due March 6. If necessary, we will solicit additional public input potentially including questions concerning bidding credits for ANCs to ensure that we have a strong record on which to base our conclusions.

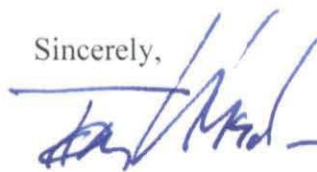
Prior to issuing licenses to winning bidders in Auction 97, we will thoroughly review and scrutinize each application to ensure that granting each license is in the public interest and that each applicant has complied with the Commission's rules, including the rules pertaining to Indian tribes' and ANCs' eligibility for bidding credits. During this process, staff frequently requests additional, specific information from winning bidders to address questions about applicable business relationships and agreements. I assure you that we take seriously concerns that parties may seek to capitalize on our rules in order to receive benefits intended for small businesses or to game the auction process. We will not grant licenses to any party that does not strictly adhere to our rules and precedents.

As part of our standard process, prior to the grant of any license, staff also makes the applications public. There is then an opportunity for interested parties to submit Petitions to Deny if they believe we should not grant certain applications, including any requests for bidding credits. We will carefully consider any such petitions as part of our application review.

Again, I am committed to providing innovative, bona fide small businesses the opportunity to participate meaningfully in spectrum auctions, and to spur additional competition, investment and consumer choice in the wireless marketplace. Our competitive bidding rules must be carefully crafted and vigorously enforced to protect the integrity of our auction program. We will review our Competitive Bidding NPRM proposals and public comments we receive, including your letter, with these goals in mind.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a horizontal line drawn across the middle of the signature.

Tom Wheeler